IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 206 of 2006

Communidade of Usgao,
Represented by its attorney
Shri Chedo Raylo Parab. ..... Petitioner.

V/s.

Jayant Shivram Khandeparkar
and others. ..... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the petitioner.

Mr. R. G. Ramani, Advocate for respondents 1 and 2.

CORAM : SMT. RANJANA DESAI, J.

DATE : 5TH JULY, 2006.

P.C.

The petitioners are the original plaintiffs in Regular Civil Suit No.12/04/B filed against the respondents, inter alia, for a declaration that the judgment and decree in Regular Civil Suit No.39/90 dated 14.3.90 is null and void. In that suit, an application came to be preferred by the plaintiffs for grant of temporary injunction restraining the defendants from continuing with the construction of a compound wall or any other construction in the suit property and also restraining them from selling, transferring alienating and creating any encumbrance on the suit property. The trial Court rejected the said application. An appeal carried from it

was also dismissed by the lower appellate Court and hence this writ petition.

2. I have heard at some length Mr. Lotlikar, learned Senior Counsel appearing for the petitioners. Mr. Lotlikar contended that the respondents have played a fraud on the petitioners by obtaining decree dated 14.3.90 to the effect that they are the sole and exclusive owners of the suit property. The learned Counsel contended that the said decree is a decree on admission. He submitted that the said decree is obtained on an admission made by the Attorney of the petitioners to the effect that the respondents are the sole and exclusive owners of the suit property. This decree also rests on a certificate to that effect issued by the Attorney of the petitioners. The learned Counsel contended that the said Attorney had no authority to make such an admission inasmuch as he was duty bound to obtain permission of the Administrative Tribunal. The learned Counsel contended that the petitioners were unaware of this decree and for the first time they came to know about it on 10.7.02. Upon coming to know about it, they filed the instant suit on 22.1.04. The learned Counsel contended that the petitioners being a public body, in the nature of things, the petitioners had to follow the required procedure and in that some time was taken. The learned Counsel contended that both the Courts below have misdirected themselves on concentrating solely on the aspect of

possession. He submitted that the respondents are in possession has not been disputed by the petitioners. The possession is not in issue. What is seriously contested by the petitioners is the issue of ownership. He submitted that the issue of ownership is an important triable issue and the Courts below erred in not concentrating on that. He submitted that there is no indication in either of the judgments that the Courts below ever applied their mind to this aspect of the case. The learned Counsel relied on a judgment of this Court in ***Babu Desai v. Communidade of Serula,*** **2000(2) Goa L.T. 427** where this Court was concerned with a consent decree. The Civil Court had passed the consent decree being unmindful of the fact that requisite permission or consent of the concerned authority was not obtained by the Communidade. In a petition under Article 227 of the Constitution of India, this Court though it fit to quash and set aside the consent decree. The learned Counsel urged that the ratio of this case is squarely attracted to the facts of the present case. He submitted that the petitioners are a public body and in the interest of justice this Court should direct the respondents to maintain status quo during the pendency of the suit.

3. I have also heard the learned Counsel for the respondents. The learned Counsel for the respondents submitted that the fact that

the respondents are in possession of the suit property, has not been disputed by the petitioners. Both the Courts below have given concurrent findings in favour of the respondents which may not be disturbed by this Court in its writ jurisdiction.

4. It is true that the respondents base their claim on decree dated 14.3.90 in which they have been declared as sole and exclusive owners of the suit property. But, after perusal of the written statement, it appears that apart from this decree, the respondents rely on certain other circumstances, more particularly set out in their written statement. The decree by which the respondents are declared to be the sole and exclusive owners was passed in the year 1990. It is true that the petitioners are a public body. The petitioners claim that they got to know about the said decree on 10.7.02. Assuming that to be so, it is not understood why the suit is filed as late as on 22.1.04. Undoubtedly, a public body requires more time to take a decision like filing of a suit because there is a procedure which has to be followed. But, a delay of about two years, prima facie, in my opinion, appears to be inordinate. It is true that the respondents are seriously disputing the issue of ownership. But possession is also an important factor which will have to be taken into consideration while granting a relief which the petitioners are seeking. What the petitioners are seeking is an order of this Court directing the parties to maintain status quo

during the pendency of the suit. In the facts of this case, after a lapse of long period, such a restraint order cannot be passed and the Courts below cannot be faulted for not having passed such an order. Ownership issue will undoubtedly be tried at the stage of final hearing of the suit. In the meantime, all that can be ordered is that in case the respondents decide to sell the suit property, they shall intimate to the prospective buyer the fact that the issue of ownership is pending in the instant suit. They shall also make it known to them that any transaction in respect of the suit property will abide by the final orders that may be passed in the suit. Hence, the following order :

The writ petition is rejected. However, in case the respondents decide to sell the suit property, they shall make the fact of pending suit known to the intending purchasers. It must be made clear to the intending purchasers that the sale, if any, of the suit property will be subject to the final decision of the suit. In the facts and circumstances of the case, the trial Court is directed to dispose of the suit as expeditiously as possible and at any rate, within a period of one year.

SMT. RANJANA DESAI, J.

Ssm.